86-541

Supreme Court, U.S.
FILED
SEP 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

UNITED STATES OF AMERICA
PLAINTIFF - RESPONDENTS

and

MICHEAL WALLACE et al.,
INTERVENORS - PETITIONERS

vs.

ALLEGHANY - LUDLUM INDUSTRIES et al.,
DEFENDANT - RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

GEORGE C. LONGSHORE
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2104 CITY FEDERAL BLDG
BIRMINGHAM, AL 35203
(205) 328-4602

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QUESTION PRESENTED

Whether a local seniority agreement negotiated between a labor organization and management is subject to veto by a tripartite committee created by a consent decree consisting of government, union and management members in the absence of proof that the seniority system is not bona fide?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED.	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.	iii-iv
OPINIONS BELOW.	2
JURISDICTION.	2
STATUTORY PROVISION INVOLVED.	2
STATEMENT OF THE CASE	3-12
REASONS FOR GRANTING THE PETITION . .	13-25
I. THE RESULTS OF COLLECTIVE BARGAINING ARE NOT SUBJECT TO GOVERNMENTAL OR JUDICIAL VETO.	13-22
II. THE LOWER COURT DECISIONS CONFLICT WITH TEAMSTERS, STOTTS AND W.R. GRACE. . . .	22-25
CONCLUSION.	25
CERTIFICATE OF SERVICE.	26

TABLE OF AUTHORITIES

PAGES

FIREFIGHTERS v. STOTTS, ____U.S. ____, 104 S.Ct. 2576 (1984) . . . 19, 22

H.K. PORTER CO. v. NLRB, 397 U.S. 99 90 S.Ct. 821 (1970). 14, 17

NLRB v. AMERICAN INSURANCE CO., 343 U.S. 395, 404 72 S.CT. 824 (1952). 15

NLRB v. INSURANCE AGENTS, 361 U.S. 744 80 S.Ct. 419 (1960) 16

NLRB v. JONES & LAUGHLIN STEEL CORP., 301 u.s. 1(1937). 14, 15

QUARLES v. PHILIP MORRIS INC., 229 F.Supp. 505 (E.D. Va. 1968) . . . 17

TEAMSTERS v. UNITED STATES, 97 S.Ct. at 1863 . . . . . 18, 20

UNITED PAPERWORKERS v. UNITED STATES, 416 F.2d 980 (5th Cir. 1969) 17, 18

UNITED STATES v. ALLEGHANY-LUDLUM INDUSTRIES, INC., 63 F.R.D. 5 (N.D.Ala. 1974), 8 RED 198, 200-201 (1974). 3, 6

UNITED STEELWORKERS v. ENTERPRISE WHEEL & CAR CORP., 363 U.S. 593, 80 S.Ct. 135 9 (1960) 17

W.R. GRACE & CO. v. UNITED RUBBER WORKERS, ____U.S.____, 103 S.Ct. 2177 (1983) 18,19, 21,22

STATUTES

42 SECTION 2000E(2)(h). 2

29 USCA SECTION 158(d). 15

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

CASE NO. _____

UNITED STATES OF AMERICA
PLAINTIFF - RESPONDENTS

and

MICHEAL WALLACE et al.,
INTERVENORS - PETITIONERS

vs.

ALLEGHANY - LUDLUM INDUSTRIES et al.,
DEFENDANT - RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Michael Wallace, Eric Smith, Alfonzo Frazier, Jr., Betty Stafford, W.P. Kallaher, Jr., Jim Latner on their behalf and on behalf of a class of persons similarly situated petition for a writ of certiorari to enable this Court to review the judgment of the United States Court of Appeals for the Eleventh Circuit in U.S.A., et al.; Michael Wallace, et al., v. Alleghany Ludlum Industries, et al Cases No. 35-7530 and 85-7661 entered on June 20, 1986 with a mandate issued on July, 19, 1986.

OPINIONS BELOW

The district court's decision is appended hereto as appendix A. The court of appeals decision is appended hereto as appendix B.

JURISDICTION

The Court of appeals entered judgment on June 20, 1986. This Court has jurisdiction to review the judgment below under 28 USCA Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 703(h) of the 1964 Civil Rights Act provides.

> "... it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system..." 42 USCA Section 2000e (2)(h).

STATEMENT OF THE CASE

I. (a) In 1974 following more than six months of negotiations between, on the one side the EEOC and the Departments of Justice and Labor, and on the other side, nine major steel companies and the United Steelworkers of America, a complaint with two consent decrees was filed on the same day in the Northern District of Alabama. The case involved all of the major steel producers in America.

The complaint charged the companies with violations of Title VII and Executive Order 11246 in hiring and initial assignment and the companies and the union with negotiating collective bargaining agreement which served to perpetuate past discrimination by means of such devices as job or department seniority. Judge Pointer approved both consent decrees later the same day. United States v. Alleghany - Ludlum Industries, Inc., 63 F.R.D. 5

(N.D.Ala. 1974), 8 FEP 198, 200-201 (1974). As found by both the District Court and the Court of Appeals, Consent Decree I was primarily intended to reform the parties' seniority practices by providing for "(1) plant continuous service, (2) transfer rights, (3) rate retention, (4) goals, and (5) back pay..." (R. Vol 1, Ex. 2 at p. 7).

The Decree made reference to the "eight plants of the Fairfield Works of United States Steel Corporation" just as it carefully defined the measure of continuous service as "plant continuous service" meaning the date an employee was hired at a facility as opposed to the date of hire with an employer.

"Except where a Basic Labor Agreement entered into between one or more of the Companies and the Union provide for the use of Company continuous service or some greater measure of service length than

plant continuous service, (hereinafter plant service) shall be used beginning on the first date referred to in paragraph 3(b), for all purposes in which a measure of continuous service is presently being utilized..." (R. Vol I, Ex. 2 at p. 20). Thus it was that the parties consented and the Court decreed that continuous service was to be measured by reference to "plants".

(b) The Court of Appeals approved the Consent Decrees as a novel and important effort to encourage and negotiate settlement of widespread charges of employment discrimination in the nation's steel industry. As the Court noted "the substantive relief falls into three basic catagories: (1) immediate implementation of broad plant wide seniority, along with transfer and testing reforms, and adoption of ongoing mechanisms for further reforms of seniority, departmental, and line of

progression (LOP) structures, all of which are designed to correct the continuing effects of past discriminatory assignments..." (Emphasis added) United States v. Alleghany - Ludlum Industries, 517 F.2d 826, 835 (5th Cir. 1975).

The Audit and Review Committee was described by the Court of Appeals as the "hub mechanism in the decrees' system of continuing review, enforcement and compliance.... It meets regularly to oversee compliance with the decrees and to resolve disputes which came before it.... This Committee is composed of representatives of the Department of Justice, the companies and the union." Id. at 835.

(c) In 1981 the Steelworkers and U.S. Steel concluded the first of a series of collective bargaining agreements relating to a new continuous caster and pipe mill to be constructed at Fairfield Works in

Alabama. At the Company's insistance the new facility was to be treated as a new and separate plant for all purposes of the Basic Labor Agreement and Local Seniority Agreement. It was agreed at the outset that assignments to pipe mill jobs would first be offered to Local 1013 members with remaining vacancies to be offered to Fairfield Works employees. (R. Vol 111, Ex. J, App. A). The seniority system was confirmed in all the later agreements (11/16/82, 1/31/83, 2/3/84, 2/16/84) as was the agreement to treat the pipe mill as a new and separate plant for seniority purposes with date of hire or training (plant seniority) to serve as the measure of seniority.

An elaborate application and bid procedure for pipe mill employment began in late 1982 at which point, as has been seen, the pipe mill was understood by all to represent a new plant with plant service

dates to be assigned at date of hire or the date training commenced. It was on the basis of these assurances that many Local 1013 members bid on pipe mill vacancies in spite of being required to forfeit all seniority rights at other Fairfield plants. Hiring began in mid - 1983 with plant service dates as of the date of hire or when training began and the plant went into operation in January 1984.

By late 1984 the pipe mill work force was in place and pipe mill date of hire was being employed in all the ordinary applications of seniority, i.e., promotions, demotions, layoffs and recall from layoff.

The Audit and Review Committee was sufficiently impressed with U.S. Steel's presentation respecting the need for separateness of the pipe mill to file a proposed amendment to the Consent Decree in December 1984 recounting the history of

bargaining, adverting to the Company's insistance on obtaining concessions in the work rules and stating its agreement with all that had transpired since 1981:

> The Audit and Review Committee, and counsel for the United States and the Equal Employment Opportunity Commission, believe the Company's stated justification represent a legitimate business consideration for having the Fairfield Seamless Pipe Mill treated as a new plant to be listed in Consent Decrees I rather than listed in the Fairfield Decree, and that none of the terms of either decree preclude the Company and Union from seeking an amendment to Consent Decree I to such effect. It is for these reasons that the Audit and Review Committee and counsel for the Government recommend that this joint motion be granted. (R. Vol. 111, Ex. 35 at paragraph 6).

In December 1984 Judge Pointer approved amendment No. 11 instructing the Audit and Review Committee to oversee the proper implementation of the consent decrees to the pipe mill "including the establishment of appropriate plant continuous service dates for bargaining

unit employees manning the facility." (Ibid. at p. 2). Thus, all that had occurred in collective bargaining received the blessings of both the Audit and Review Committee and Judge Pointer and became part of the Consent Decree.

In the meanwhile the local union and management at the Pipe Mill negotiated an agreement of July 16, 1984, which undertook to allow Local 1013 employees to use their Local 1013 seniority dates.[1] This local agreement provoked a challenge by the "Johnson intervenors" and also provoked the Audit and Review Committe to reconsider and to contradict its earlier approval of the

1. While this agreement to allow a longer measure of service to some but not all pipe mill workers was criticized as favortism, in reality it disadvantaged none of the non-1013 employees whose relative position on the bottom one-third of the seniority roster remained unchanged. The reshuffling that took place was among the 1013 employees who occupied the upper two-thirds to begin with; thus the 1013 class gained noting relative to the 1013 class by reason of the local seniority contract of July, 1984.

agreements in which the pipe mill was to be treated as a new facility. The Committee, some two years following the first hiring at the pipe mill, suddenly decided that Fairfield Works seniority, rather than pipe mill date of hire, would be the measurement of continuous service. In other words, the Audit and Review Committee, rather than returning to the date of hire seniority arrangement interposed a new seniority concept of works seniority theretofore unknown in the American steel industry but one, interestingly enough, that the Justice Department had sought in the original complaint filed in 1974.

The Wallace intervenors alleged in their complaint that the use of works sneiority violated Consent Decree I, the Basic Labor Agreement and the Local seniority agreement, and their rights as employees to have their working conditions formed by means of collective bargaining.

The district court heard argument from the intervenors, allowed a limited intervention but dismissed the complaints pursuant to Rule 12(b)(6), F.R.C.P., for failing to state a claim upon which relief can be granted. The district court could find nothing wrong with use of Fairfield Works seniority, the use of Works seniority was "not in conflict with the purposes of Consent Decree I. (Ibid. Memorandum of Opinion at p. 2.).

REASONS FOR GRANTING THE WRIT

I. The Results of Collective Bargaining Are Not Subject To Governmental or Judicial Veto.

In order to accomplish certain national objectives Congress, in 1935, by means of "encouraging the practice and procedure of collective bargaining and by protecting the exercise of workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection" undertook to eliminate obstacles to the free flow of commerce by enacting the National Labor Relations Act. 29 USCA Section 151.

Congress intended that collective bargaining would serve a number of national goals including the stability resulting from agreements containing no-strike

clauses,[2] to correct an imbalance in the relative strength of the contending parties[3] and by means of "constructive, open discussions" it was hoped that the passions and prejudices of the past would be overcome.[4] However, the object of the Act "was not to allow government regulation of the terms and conditions of employment but rather to ensure that employers and their employees could work together to establish mutually satisfactory conditions." H.K. Porter Co. v. N.L.R.B., 397 U.S. 99 90 S.Ct. 821 (1970). The Supreme Court, in one of its earliest statements about the Wagner Act, confirmed that:

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2. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

3. S. Rep. No. 574, 74th Cong., 1st Sess. 12 (1935).

4. H.K. Porter v. NLRB, 397 U.S. 99 (1970).

> The Act does not compel agreements between employers and employees. It does not compel any agreement whatever... The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel. "NLRB v. Jones & Laughlin Steel Co., 301 U.S. at 45.

Following what was preceived to be some overreaching by the Board, Congress amended the Act in 1947 to state that the obligation to bargain "does not compel either party to agree to a proposal or require the making of a concession." 29 USCA Section 158(d). In discussing the effects of that amendment, the Supreme Court has said it is "clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." NLRB v. American Insurance Co., 343 U.S. 395, 404 72 S.Ct. 824 (1952). Later the Court

affirmed that view stating that "it remains clear that section 8(d) was an attempt by Congress to prevent the Board from controlling the settling of the terms of collective bargaining agreements." NLRB v. Insurance Agents, 361 U.S. 477 80 S.Ct. 419 (1960). Emphasizing that the Act is grounded on the premise of freedom of contract the Supreme Court in 1970 once again had occasion to remind the government of the limits of its authority to order an employer or a union to agree to a substantive term of a labor contract even for the purpose of remedying a violation of

the Act.[5] H.K. Porter v. NLRB, 90 S.Ct. at 826.

Of more recent coinage is the struggle in a closely related context over seniority systems which are said to perpetuate the effects of past discrimination. Although the Civil Rights Act of 1964 contained a savings clause protecting bona fide seniority systems, for over a decade after passage of the law the view that Section 703(h) did not immunize seniority systems that perpetuate past discrimination gained much support. Quarles v. Philip Morris Inc., 229 F.Supp. 505 (E.D. Va. 1968); United Paperworkers v. United States, 416

5. While a labor arbitrator has considerable latitude to interpret collective bargaining agreements and to fashion appropriate remedies he "does no sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award it legitimate only so long as it draws its essence from the collective bargaining agreement." United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 135 8 (1960).

F.2d 980 (5th Cir. 1969). Eventually, however, the Supreme Court was forced to conclude that "both the literal terms of Section 703(h) and the legislative history of Title VII demonstrate that Congress considered this very effect of many seniority systems and extended a measure of immunity to them." Teamsters v. United States 97 S.Ct. at 1863. The Court concluded that an otherwise neutral, legitimate seniority system does not become unlawful under Title VII because it may perpetuate pre-Act discrimination. "Congress did not intend to make it illegal for employees with vested seniority rights to continue to exercise those rights, even at the expense of pre-Act discriminates." Id. at 1863.

The inviolability of the results of labor negotiations received a strong affirmation in W.R. Grace and Co. v. United Rubber Workers, _____ U.S. _____, 103 S.Ct

2177 (1983), in which the Supreme Court emphatically rejected the notion that the government's concept of equality was entitled to preference over the terms of a valid nondiscriminatory seniority system. "The Company voluntarily assumed its obligations under the collective bargaining agreement and the arbitrators' interpretations of it. No public policy is violated by holding the Company to those obligations, which bar the Company's attempted reallocation of the burden." 103 S.Ct. at 2186.

In the case of Firefighters v. Stotts, _____ U.S. _____, 104 S.Ct. 2576 (1984), the Supreme Court again upheld the citadel of seniority against government interference. In the absence of new victims a consent decree was incapable of being modified to override a collectively bargained seniority system requiring layoff of the youngest employee although such a

system may well impact more severely on miniority workers. Once again, adverting to the legislative history relied on in Teamsters, the Court went on to reject the idea that the decree's modification was proper pursuant to the district court's equity jurisdiction. The court lacks authority "to impose a modification of a decree that runs counter to statutory policy." 104 S.Ct. at 2590, n.17.

The pipe mill seniority agreements for the years 1981-84 were the product of collective bargaining between U.S. Steel and the Steelworkers. None of those agreements were negotiated in order to discriminate nor is there any claim to that effect. U.S. Steel and the Steelworkers negotiated a seniority system for the pipe mill which the Audit and Review Commitee cannot overrule. Even the Union's agreement as a member of the Audit and Review Committee cannot serve to change the

pipe mill plant seniority system because what the Audit and Review Committee did with or without the Union's consent is not collective bargaining, which is, by definition, negotiations between an employer and a bargaining representative sans government supervision.

Our complaint is with the Audit and Review Committee. We are attempting, after all, to enforce a series of contracts negotiated by the Union for the Petitioner's benefit. To the extent that the Union is a member of the Committee it performs a remedial and not a bargaining function; it is a vehicle to remedy the past but not to determine the future; it serves as a judicial servant but not as a servant of collective bargaining.

The Union and the Company are free to do things in collective bargaining that the Audit and Review Committee, with its limited powers, cannot do. W.R. Grace and

Co. v. United Rubber Workers, supra; Firefighters v. Stotts, supra.

II. THE LOWER COURT DECISIONS CONFLICT WITH TEAMSTERS, STOTTS AND W.R. GRACE.

Consent Decree I had as its purpose and scope to resolve all charges of discrimination and issues arising thereunder and to increase the promotional opportunities of minorities, female and longer service employees. (R. Vol I, Ex. 2 at p. 7). The Decree sought to achieve its ends by, inter alia, the use of "plant continuous service" at each of over one hundred separately named "plants" in the United States belonging to the nine signatory steel companies. (Id. at 8-12).

Consent Decree I did not pretend to supplant collective bargaining:

> EFFECT OF COLLECTIVE BARGAINING -- The terms of this Decree shall be fully binding on the Companies and Union as defined in paragraph 2, and the arrangements provided herein are hereby made a part of the defendants' Basic Labor Agreement as though ex-

> pressly incorporated therein, the provisions of any such Basic Labor Agreement, local seniority agreement, practice or arrangement to the contrary notwithstanding. Provided, however, nothing in this Decree shall operate to prevent the Companies and the Union from Pursuing normal collective bargaining related to areas covered by this Decree so long as nothing done therein shall be inconsistent with this Decree.

It is also important that the consent decree embodied the doctrines of res judicata and collateral estoppel as to "all plaintiffs with respect to all issues of law and fact and matters of relief within the scope of the complaint of this Decree." (Id. at p. 4).

By its terms Consent Decree I was not intended to and indeed could not remove from the parties the right to engage in collective bargaining such as later occurred when, beginning in 1981, U.S. Steel and the Steelworkers signed the first of a series of contracts which led to the construction and eventual manning of the

Fairfield pipe mill. In that agreement and in all subsequent agreements plant service (i.e. the first day worked at the plant) would be the governing rule for measuring length of continuous service. Indeed, this was the only measurement of continuous service that the Audit and Review Committee could approve for the pipe mill in view of the definitions contained in the Consent Decree. Only the process of collective bargaining could arrive at a longer measurement of service than that beginning the date of hire at a particular plant.

The Petitioners charge that the Audit and Review Committee has usurped collective bargaining. The element of government supervision taints the Committee's action respecting the Pipe Mill. We have raised a major issue of the extent to which a government sponsored committee can veto the results of free collective bargaining. The Committee has gone far beyond its limited

role of insuring compliance to making decisions which can only be made by the parties. The question is not whether works seniority is right or wrong but whether a consent decree committee which includes government representatives can make the decision.

CONCLUSION

The Steel Industry has a long history of permitting seniority to be set by agreement at the loca level. It was a local seniority agreement which the Audit and Review Committee overruled substituting its crude concept of what ought to be for that which the parties had selected in free unsupervised collective bargaining.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been furnished to:

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by way of regular U.S. Mail on this the 17 day of September, 1986.

George C. Longshore
Attorney at Law

APPENDIX A
Typed for ease
of reading.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, et al.,	)
Plaintiffs,	)
and	)
MICHEAL WALLACE, ERIC SMITH, BETTY STAFFORD, A.L. FRAZIER, JIM LATNER, W.P. KALLAHER, JR., who seek to intervene in their behalf and in behalf of a class of persons similarly situated,	)
Applicants for Intervention,	)
and	)
JOHNNY JOHNSON, et al.,	)
Applicants for Intervention,	)
vs.	)
ALLEGHANY-LUDLUM INDUSTRIES, et al.,	)
Defendants.	)

MEMORANDUM OF OPINION

On June 18, 1985, the court heard arguments for and opposing allowing the intervention in this case. All interested

parties were represented by counsel, including the three classes of potential intervenors. The sum of all the class members requesting intervention would equal every United Steel Workers of America union member either employed at the Fairfield Works Seamless Pipe Mill or potentially employed there. Each class of intervenors seek review by this court of a decision made by the Audit and Review Committee, Docket Number 130-17, dated March 28, 1985, alleging this decision violates various rights which their class members hold. The Committee received the power to make such a decision effecting the Seamless Pipe Mill plant union workers pursuant to ths court's approval of Amendment Eleven of the original consent decree, entered December 4, 1984. The affect of Amendment Eleven was to bring the Fairfield Seamless Pipe Mill within the purviews of the original plan set forth in this decree.

Subsequent to the December 4th order, the committee negotiated and concluded in its decision that the Fairfield Works continuous service date was to be sued as the measure of seniority for the workers stationed within the Seamless Pipe Mill plant. Prior to this decision, the primary date to establish seniority rights had been the date the employee first began working in the Seamless Pipe Mill Plant itself. The potentially longer Fairfield Works continuous service date was used only if two or more employees with the same in-plant service date competed for the same position.

This court retained jurisdiction to review certain events arising under the original decree. Paragraph Twenty of the Consent Decree I states:

> The court hereby retains jurisdiction of this cause for the purpose of issuing any additional orders or decrees needed to effectuate, clarify or enforce the full purpose and intent of this decree.

In light of this authority, the court concludes that the intervenors' Motions to Intervene are due to be granted to the extent the intervenors' complaints attack the Audit and Reveiw Committee's decision of March 28, 1984, as being contrary to the provisions of Consent Decree I. The granting of these motions is on a limited basis, and is not for the broader purpose of having the court review the competing positions among the United Steelworkers Union, its membership or subclasses thereof. Intervention in a manner other than on this limited basis places the court in the position of not enforcing the consent decree but soley reviewing the decisions made by the union in representing its membership.

Reviewing the Audit and Reveiw Committee's decision in light of the Consent Decree I, the court finds no merit in the intervenors' complaint. The March

28, 1985 Committee decision is not in conflict with the purposes of Consent Decree I. The establishment of the Fairfield Works continuous work date as a basis for seniority is entirely consistent with this decree and the court's approval of Amendment Eleven. Finding no merit to the intervenors' complaint as to the permissibility of the Audit and Review Committee's decision, the intervenors' complaint is due to be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A separate order to this effect will be entered.

This the 28th day of June, 1985.

U. S. District Judge

APPENDIX B
Typed for ease
of reading.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 85-7530 & 85-7661

D.C. Docket No. 74-0339

UNITED STATES OF AMERICA, etc., et al.,

Plaintiffs - Appellees,

MICHEAL WALLACE, ERIC SMITH, BETTY STAFFORD, A.L. FRAZIER, JIM LATNER, W.P. KALLAHER, JR., who seek to intervene in their behalf and in behalf of a class of persons similarly situated,

Applicants for Intervention - Appellants,

versus

ALLEGHENY-LUDLUM INDUSTRIES, INC., et al.,

Defendants - Appellees.

Appeals from the U S District Court for the

Northern District of Alabama

(June 20, 1986)

Before HILL, Circuit Judge, HENDERSON*, Senior Circuit Judge, and LYNNE**, Senior District Judge.

PER CURIAM: AFFIRMED. See Cir. R. 25.

"Costs taxed against applicants for intervention-appellants."

*See Rule 3(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.

**Honorable Seybourn H. Lynn, Senior U.S. District Judge for the Northern District of Alabama, setting by designation.

Judgment Entered: June 20, 1986
For the Court: Miguel J. Cortez, Clerk,

By: _____
Deputy Clerk

ISSUED AS MANDATE:

Appendix A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

UNITED STATES OF AMERICA, et al.,

Plaintiff,

and

MICHAEL WALLACE, ERIC SMITH, BETTY STAFFORD, A. L. FRAZIER, JIM LATNER, W. P. KALLAHER, JR., who seek to intervene in their behalf and in behalf of a class of persons similarly situated,

Applicants for Intervention,

and

JOHNNY JOHNSON, et al.,

Applicants for Intervention,

-vs.-

ALLEGHANY-LUDLUM INDUSTRIES, et al.,

Defendants.

FILED

JUN 28 1985

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

dlm

ENTERED

JUN 28 1985

No. CV 74-P-0339-S

Memorandum of Opinion

On June 18, 1985, the court heard arguments for and opposing allowing the intervention in this case. All interested parties were represented by counsel, including the three classes of potential intervenors. The sum of all the class members requesting intervention would equal every United Steel Workers of America union member either employed at the Fairfield Works Seamless Pipe Mill or potentially employed there. Each class of intervenors seek review by this court of a decision made by the Audit and Review Committee, Docket Number 130-17, dated March 28, 1985, alleging this decision violates various rights which their class members hold. The Committee received the

81

power to make such a decision effecting the Seamless Pipe Mill plant union workers pursuant to this court's approval of Amendment Eleven of the original consent decree, entered December 4, 1984. The effect of Amendment Eleven was to bring the Fairfield Seamless Pipe Mill within the purviews of the original plan set forth in this decree.

Subsequent to the December 4th order, the committee negotiated and concluded in its decision that the Fairfield Works continuous service date was to be used as the measure of seniority for the workers stationed within the Seamless Pipe Mill plant. Prior to this decision, the primary date to establish seniority rights had been the date the employee first began working in the Seamless Pipe Mill Plant itself. The potentially longer Fairfield Works continuous service date was used only if two or more employees with the same in-plant service date competed for the same position.

This court retained jurisdiction to review certain events arising under the original decree. Paragraph Twenty of the Consent Decree I states:

> The court hereby retains jurisdiction of this cause for the purpose of issuing any additional orders or decrees needed to effectuate, clarify or enforce the full purpose and intent of this decree.

In light of this authority, the court concludes that the intervenors' Motions to Intervene are due to be granted to the extent the intervenors' complaints attack the Audit and Review Committee's decision of March 28, 1984, as being contrary to the provisions of Consent Decree I. The granting of these motions is on a limited basis, and is not for the broader purpose of having the court review the competing positions among the United Steelworkers Union, its membership or subclasses thereof. Intervention in a manner other than on this limited basis places the court in the position of not enforcing the consent decree but solely reviewing the decisions made by the union in representing its membership.

Reviewing the Audit and Review Committee's decision in light of the Consent Decree I, the court finds no merit in the intervenors' complaint. The March 28, 1985 Committee decision is not in conflict with the purposes of Consent Decree I. The

establishment of the Fairfield Works continuous work date as a basis for seniority is entirely consistent with this decree and the court's approval of Amendment Eleven. Finding no merit to the intervenors' complaints as to the permissibility of the Audit and Review Committee's decision, the intervenors' complaint is due to be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A separte order to this effect will be entered.

This the 25th day of June, 1985.

United States District Judge

A TRUE COPY
JAMES E. VANDEGRIFT, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
BY: Susan Manning
DEPUTY CLERK

62

Appendix 15

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 85-7530 & 85-7661

D.C. Docket No. 74-0339

UNITED STATES OF AMERICA, etc., et al.,

Plaintiffs-Appellees,

MICHAEL WALLACE, ERIC SMITH, BETTY STAFFORD, A. L. FRAZIER, JIM LATNER, W. P. KALLAHER, JR., who seek to intervene in their behalf and in behalf of a class of persons similarly situated,

Applicants for Intervention-Appellants,

versus

ALLEGHENY-LUDLUM INDUSTRIES, INC., et al.,

Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Alabama

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(June 20, 1986)

Before HILL, Circuit Judge, HENDERSON*, Senior Circuit Judge, and LYNNE**, Senior District Judge.

PER CURIAM: AFFIRMED. See Cir. R. 25.

"Costs taxed against applicants for intervention-appellants."

*See Rule 3(b), Rules of the U. S. Court of Appeals for the Eleventh Circuit.

**Honorable Seybourn H. Lynne, Senior U. S. District Judge for the Northern District of Alabama, sitting by designation.

Judgment Entered: June 20, 1986
For the Court: Miguel J. Cortez, Clerk
By: Deputy Clerk

DATE: JUN 23 1986